

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
MIDDLE DIVISION**

**MAC EAST, LLC,
an Alabama Limited Liability
Corporation,**

Plaintiff,

v.

**SHONEY’S, LLC,
a Tennessee limited liability company,**

Defendant.

**CIVIL ACTION NO.:
2:05-CV-1038(F)**

WITNESS AND EXHIBIT LIST

COMES NOW Defendant, SHONEY’S, LLC (“Shoney’s”), as successor-in-interest to Shoney’s, Inc., and pursuant to the Scheduling Order, submits the following list of witnesses and exhibits it may offer at a trial of this matter:

WITNESSES

1. Wylie P. Johnson
1991 Shades Crest Road
Birmingham, AL 35216
Lurene H. Johnson
1991 Shades Crest Road
Birmingham, AL 35216
(205) 824-8722
2. Donna Power (in person or by deposition)
Shoney’s, LLC
1717 Elm Hill Pike, Suite B-1
Nashville, TN 37210-3707
(615) 391-5395

3. Robert J. Stetson (by deposition)
Shoney's, LLC
1717 Elm Hill Pike, Suite B-1
Nashville, TN 37210-3707
(615) 391-5395
4. Joan Surles
McClinton & Company, Inc.
2777 Zelda Road
Montgomery, AL 36106
(334) 270-9653
5. Joel D. McClinton
McClinton & Company, Inc.
2777 Zelda Road
Montgomery, AL 36106
(334) 270-9653
6. Rory Smith
946 Lake Mitchell Road
Clanton, Alabama 35045
7. Any witnesses necessary for rebuttal or impeachment purposes.
8. All witnesses identified by Plaintiff.
9. All witnesses needed to authenticate documents, exhibits, or other matters offered at trial.

EXHIBITS

The following exhibits and tangible things are in the possession, custody, or control of Defendant and may be used by Defendant to support its claims or defenses:

1. Proposed Sub-Lease Agreement dated May 2005 between Mac East, LLC and PAM Enterprises, Inc. d/b/a City Café Diner;
2. Lease dated April 13, 1979 by and between Wylie P. Johnson, Lurene H. Johnson and Shoney's, Inc.;
3. Letter from Susann Shearon at Shoney's, Inc. dated December 22, 1998 to Wylie P. Johnson;
4. Assignment and Assumption of Lease dated February 20, 2002 by and between Shoney's, Inc. and MAC East, LLC;

5. Letter from Joan Surles to Donna Power dated May 9, 2005;
6. Menu of City Café Diner in College Park, Georgia;
7. Statement of Assets, Liabilities and Net Worth of Mr. Jimmy Tselios as of October 31, 2004;
8. Letter from William D. Curtis dated November 25, 2004 to Board of Directors of Rochester Seafood Company;
9. Compiled income statement of Rochester Seafood Company from May through October, 2004;
10. Letter from William D. Curtis dated November 25, 2004 to the Board of Directors of College Park Grill, Inc.;
11. Compiled income statement of College Park Grill, Inc. from January through September, 2004;
12. Six (6) photographs supplied by Plaintiff to Defendant of purportedly “similar operations”; and
13. Letter from Jeff Blitz to Shoney’s, Inc. dated June 24, 2005.
14. Articles of Conversion of Shoney’s, Inc. into Shoney’s, LLC;
15. Closing statement dated February 20, 2002 between Shoney’s, Inc. and MAC East, LLC or to Wylie or Lurene Johnson under the lease;
16. Checks from McClinton & Company, Inc. or MAC East, LLC to Shoney’s, Inc. and/or Shoney’s, LLC;
17. Asset Sale Agreement dated September 28, 2001 between Plaintiff and Defendant and related closing documents; and
18. Letter from Wylie Johnson dated October 27, 2005 regarding 2005 tax notice.
19. Guaranty Agreement dated February 20, 2002 between Joel D. McClinton and Shoney’s, Inc.;
20. Facsimile Letter dated April 30, 2002 from Jeffrey Blitz to Donna Power with attachments;
21. Letter from Andrew Schwarcz dated February 18, 2002 addressed to Jeffrey Blitz together with attachments;

22. Proposed forms of Lease Agreement between Mac East, LLC and ShoRest 1115, L.L.C. submitted to counsel for Defendant via series of e-mails;
23. Landlord Consent to Assignment dated February 20, 2002;
24. Bill of Sale dated February 19, 2002;
25. Email letter from Joan Surles to Donna Power with attachments dated June 14, 2005;
26. Proposal to Sub-lease dated March 2, 2006 signed by Rory Smith;
27. Sublease between Mac East, LLC and ShoRest 1115, LLC;
28. Shoney's, LLC Consent to Sublease dated April 10, 2006;
29. Any exhibits listed by the Plaintiff; and
30. Any documents necessary for rebuttal or impeachment purposes.
31. All exhibits to the depositions of Robert Stetson, Joan Surles, Donna Power, Matthew Coblenz, and Letitia Henson.

/s/ Paul O. Woodall, Jr.
Paul O. Woodall, Jr.
Middle District I.D. No. ASB-4297-O59P

/s/ James N. Nolan
James N. Nolan
Middle District I.D. No. ASB-6012-N61
Attorneys for Defendant, Shoney's, LLC

OF COUNSEL
Walston, Wells & Birchall, LLP
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Birmingham, Alabama 35203
Telephone: (205) 244-5200
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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send a notification of such filing to the following:

Dennis R. Bailey, Esq.
RUSHTON, STAKELY, JOHNSTON & GARRETT, P.A.
184 Commerce Street
Post Office Box 270
Montgomery, Alabama 36101-0270

s/ Paul O. Woodall, Jr.
OF COUNSEL